



U.S. Citizenship
and Immigration
Services

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JAN 28 2004

FILE:

Office: TEXAS SERVICE CENTER Date:

IN RE:

Applicant:

APPLICATION:

Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Cindy M. Gomez for
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Texas Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Honduras who is seeking Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254a.

The director determined that the applicant failed to submit evidence to establish that he was eligible for filing after the initial registration period from January 5, 1999 to August 20, 1999. The director also determined that the applicant had failed to submit the requested court disposition for his arrest. The director, therefore, denied the application.

On appeal, the applicant states he is eligible for late registration because he is the spouse of a current TPS registrant. In addition, the applicant maintains that he has never been in Austin, Texas, and the May 7, 1999 arrest pertains to another individual. The applicant submits additional documentation relating to his marriage and his wife's temporary protected status.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an alien who is a national of a foreign state designated by the Attorney General is eligible for temporary protected status only if such alien establishes that he or she:

- (a) Is a national, as defined in section 101(a)(21) of the Act, of a foreign state designated under section 244(b) of the Act;
- (b) Has been continuously physically present in the United States since the effective date of the most recent designation of that foreign state;
- (c) Has continuously resided in the United States since such date as the Attorney General may designate;
- (d) Is admissible as an immigrant except as provided under section 244.3;
- (e) Is not ineligible under 8 C.F.R. § 244.4; and
- (f)
 - (1) Registers for TPS during the initial registration period announced by public notice in the *Federal Register*, or
 - (2) During any subsequent extension of such designation if at the time of the initial registration period:
 - (i) The applicant is a nonimmigrant or has been granted voluntary departure status or any relief from removal;
 - (ii) The applicant has an application for change of status, adjustment of status, asylum, voluntary departure, or any relief from removal which is pending or subject to further review or appeal;

- (iii) The applicant is a parolee or has a pending request for reparole; or
- (iv) The applicant is a spouse or child of an alien currently eligible to be a TPS registrant.
- (g) Has filed an application for late registration with the appropriate Service director within a 60-day period immediately following the expiration or termination of condition described in paragraph (f)(2) of this section.

Pursuant to section 244(c)(2)(B)(i) and the related regulations in 8 C.F.R. § 244.4(a), an alien shall not be eligible for temporary protected status if the Attorney General finds that the alien has been convicted of any felony or two or more misdemeanors committed in the United States.

8 C.F.R. § 244.1 defines "felony" and "misdemeanor:"

Felony means a crime committed in the United States punishable by imprisonment for a term of more than one year, regardless of the term such alien actually served, if any, except when the offense is defined by the state as a misdemeanor, and the sentence actually imposed is one year or less regardless of the term such alien actually served. Under this exception for purposes of section 244 of the Act, the crime shall be treated as a misdemeanor.

Misdemeanor means a crime committed in the United States, either:

- (1) Punishable by imprisonment for a term of one year or less, regardless of the term such alien actually served, if any, or
- (2) A crime treated as a misdemeanor under the term "felony" of this section.

For purposes of this definition, any crime punishable by imprisonment for a maximum term of five days or less shall not be considered a felony or misdemeanor.

Continuously physically present means actual physical presence in the United States for the entire period specified in the regulations. An alien shall not be considered to have failed to maintain continuous physical presence in the United States by virtue of brief, casual, and innocent absences as defined within this section.

Continuously resided means residing in the United States for the entire period specified in the regulations. An alien shall not be considered to have failed to maintain continuous residence in the United States by reason of a brief, casual and innocent absence as defined within this section or due merely to a brief temporary trip abroad required by emergency or extenuating circumstances outside the control of the alien.

Persons applying for TPS offered to Hondurans must demonstrate that they have continuously resided in the United States since December 30, 1998, and that they have been continuously physically present in the United States since January 5, 1999. On May 11, 2000, the Attorney General announced an extension of the TPS designation until July 5, 2001. Subsequent extensions of the TPS designation have been granted with the current extension valid until January 5, 2005, upon the applicant's re-registration during the requisite time period.

A Federal Bureau of Investigations (FBI) fingerprint check reveals that on May 7, 1999, the applicant was arrested in Austin, Texas, under the name Raul Medina, for "criminal mischief greater than \$50."

The record reflects that the applicant filed his TPS application on June 26, 2002. In a notice of intent to deny dated July 18, 2002, the applicant was requested to submit a photo identification document from his country of origin and evidence to establish that he was eligible for filing after the initial registration period from January 5, 1999 to August 20, 1999. On August 8, 2002, the applicant was informed that an FBI background check based upon his fingerprints, showed that he had been arrested on May 7, 1999 by the Department of Public Safety, Austin, Texas, and charged with one count of criminal mischief greater than \$50. The applicant was requested to submit police history and clearance checks for every city in which he had lived for the past five years, certificates of disposition for all arrests, court dispositions for any convictions showing any sentence imposed, and written confirmation from the arresting police department if a charge had been dropped.

The applicant, in response, submitted only a copy of his birth certificate and a "Certificate of Record Search" from the Harris County, Texas, District Clerk, Houston, Texas, indicating that the records did not disclose any arrests under the applicant's name. The director denied the application because the applicant had not submitted the requested information regarding his May 7, 1999 arrest, and he had not established eligibility for late registration.

Aliens applying under the provisions for late initial registration must prove that they are eligible because during the initial registration period of January 5, 1999 through August 20, 1999, they fell within the provisions described in paragraph (f)(2) above.

The applicant, on appeal, states that he is eligible for late registration because he is the spouse of an alien currently eligible for TPS. The applicant submits a copy of a Form No. CC-B-03-31-02, Marriage License, issued by the County Clerk, Harris County, Texas, on June 29, 2000, and a Declaration and Registration of Informal Marriage, Harris County, Texas, dated June 30, 2000. However, in order to establish eligibility for late registration as the spouse of an alien currently eligible for TPS, the qualifying relationship must have existed during the initial registration period of January 5, 1999 to August 5, 1999.

The applicant failed to submit the requested photo identification from his country of origin. While the applicant states that the arrest on May 7, 1999 does not pertain to him because he has never been in Austin, Texas, he was informed that an FBI background check based upon his fingerprints, showed that he had been arrested on that date by the Department of Public Safety, Austin, Texas. It is the applicant's responsibility to cooperate in the verification process and furnish all requested documentation. The applicant has failed to provide documentation requested by the director. The applicant's statement, on appeal, does not overcome the adverse evidence in the record.

The applicant has failed to provide documentation requested by the director and evidence that he has met the criteria for late filing. Consequently, the director's decision to deny the application for temporary protected status will be affirmed.

Beyond the decision of the director, while the director stated in the July 18, 2002 and August 8, 2002 notices that the applicant had met the physical presence and continuous residence criteria, an examination of the record of proceeding does not support that conclusion. However, since the appeal will be dismissed on the grounds stated above, these additional grounds will not be discussed further.

The burden of proof is upon the applicant to establish that he or she meets the above requirements. Applicants shall submit all documentation as required in the instructions or requested by the Service. 8 C.F.R. § 244.9(a). The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. To meet his or her burden of proof the applicant must provide supporting documentary evidence of eligibility apart from his or her own statements. 8 C.F.R. § 244.9(b). The applicant has failed to meet this burden.

ORDER: The appeal is dismissed.